

MARDAM EXPLORATION, INC.

IBLA 80-846

Decided February 9, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, requiring execution of special stipulations prior to issuance of oil and gas lease. NM-A 37982 TX.

Set aside and remanded.

1. Bureau of Reclamation: Generally--Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil and Gas Leases: Stipulations

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation (now the Water and Power Resources Service), the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

2. Bureau of Reclamation: Generally--Oil and Gas Leases: Stipulations

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation (now the Water and Power Resources Service) requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, such stipulation must be supported by valid reasons weighed with due regard for the

public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

APPEARANCES: James R. Dammann, President, Mardam Exploration, Inc., for the appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HARRIS

Mardam Exploration, Inc. has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 28, 1980, requiring execution of special stipulations as a condition to issuance of noncompetitive acquired lands oil and gas lease NM-A 37982 TX.

In its statement of reasons for appeal, appellant objects to the sentence in the stipulations which reads: "No drilling operations will be conducted on any of the lands described in the lease." The subject land, consisting of 677.9 acres of acquired land administered by the Bureau of Reclamation (now the Water and Power Resources Service), is situated within the Palmetto Bend Dam Project, Jackson County, Texas. Appellant argues that, prior to making its offer to lease on July 23, 1979, it obtained from the Bureau of Reclamation a copy of their special stipulations for the Palmetto Bend project and that no mention was made of a ban on all drilling operations. <sup>1/</sup> Rather, constraints were placed on drilling operations; among them, no well was to be drilled below the elevation of 44.0 feet, all storage tanks were to be constructed above the elevation of 47.0 feet, no well was to be drilled within 200 feet of any dam, dike, or other major structure, and an appropriate environmental assessment regarding drilling activities was to be provided. Appellant explains that its lease offer was not filed until it had obtained the approval of the agency it thought had jurisdiction over drilling rights requirements.

The record, however, reveals that by memorandum dated October 12, 1979, the Bureau of Reclamation recommended to BLM that "because of flooding and reservoir operations, we request that the lease prohibit drilling on the described lands." This prohibition was subsequently included in the revised special stipulations.

[1] The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. Geo. Inc., 34 IBLA 27 (1978); Charles F. Hajek, 29 IBLA 330 (1977). Where the lands in question are under surface

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<sup>1/</sup> That transmission did, however, contain the caveat that "[t]he project office could possibly request additional stipulations."

jurisdiction of a service or bureau within the Department of the Interior, such as the Water and Power Resources Service, the consent of the Secretary of the Interior is necessary under the Act for leasing of the land. Walter W. Sapp, 29 IBLA 219 (1977); Daphne Shear, 29 IBLA 33 (1977); Duncan Miller, A-28104 (Dec. 1, 1959). However, the views of the service or bureau will be given careful consideration. In this case, as pointed out above, the prohibition recommendation was incorporated in the proposed stipulations.

[2] Clearly, where the Secretary determines to issue a lease, special stipulations to protect environmental and other land use values may be required to be executed. Vern K. Jones, 26 IBLA 165 (1976); 43 CFR 3109.2-1. Proposed stipulations, though, must be supported by valid reasons weighed with due regard for the public interest. A. A. McGregor, 18 IBLA 74 (1974). Moreover, where a stipulation would forbid drilling operations on any of the lands described in the lease, it must be demonstrated that the values to be protected are of sufficient importance to warrant such a prohibition and that "less stringent alternatives would not adequately accomplish the intended purpose by containing the adverse effects of oil and gas operations within acceptable limits." Bill J. Maddox, 17 IBLA 234, 237 (1974); see also Neva H. Henderson, 31 IBLA 217 (1977).

In the present case, BLM's decision to require execution of the "no drilling operations" stipulation appears to be based on an unsubstantiated recommendation of the Bureau of Reclamation. As we stated in James M. Chudnow, 43 IBLA 375, 376 (1979): "BLM should make an independent determination as to whether the imposition of protective stipulations are necessary, appropriate, and reasonable to achieve the desired result."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for further action not inconsistent herewith.

Bruce R. Harris

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Douglas E. Henriques  
Administrative Judge

